

AMENDED IN ASSEMBLY SEPTEMBER 10, 2001

AMENDED IN ASSEMBLY JULY 2, 2001

AMENDED IN SENATE MAY 15, 2001

SENATE BILL

No. 542

Introduced by Senator Ortiz

February 22, 2001

An act to amend Sections 7000, 7001, 7002, 7003, 7005, 7007, 7010, 7010.5, 7010.7, 7012, 7013, 7014, 7016, 7021, ~~7025~~, 7054.6, 7104.1, 7109, 7116, 7200, 8100, 8300, 8571, and 8650 of, to amend the heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of, to add Section 8650.5 to, and to repeal Sections 7017, 7054.5, 8113.2, 8301, 8302, 8303, 8304, 8305, 8306, 8307, and 8308 of, the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Ortiz. Cemeteries.

Existing law regulates the business of cemeteries and defines key terminology used in the cemetery business.

This bill would make changes to the definitions used in the cemetery business in that it clarifies, amends, and eliminates various definitions.

This bill would combine the statutes, which provided for a cemetery authority's power to regulate the use, care, control, management, restriction, and protections of the cemetery land, into one statutory section and repeal other sections that duplicate the powers of the cemetery authority.

Under existing law, if the owner of a cemetery plot transferred to the owner by deed or certificate of ownership dies without making a disposition of the plot either in his or her will or by specific devise or

by a written declaration filed and recorded in the office of the cemetery authority, the plot becomes inalienable upon the person's death and becomes the family plot of the owner.

This bill would provide that if the owner of a family plot dies without making disposition of the plot, the unoccupied ~~portion or~~ portions of the plot would pass by the laws of intestate succession upon the owner's death. This bill would also provide that ~~the unoccupied portion or portions of any family plot that became inalienable pursuant to the provisions of former Section 8650 shall pass by the laws of intestate succession and shall become alienable. This bill would establish specific requirements for transferring title to those plots, on and after January 1, 2002, any unoccupied portions of a family plot that previously were inalienable pursuant to the above existing law provision, shall pass by the laws of intestate succession and shall become alienable. This bill would impose specific requirements on the seller and the cemetery authority with respect to the sale, transfer, or donation of any unoccupied portions of a family plot.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7000 of the Health and Safety Code is
2 amended to read:

3 7000. The definitions in this chapter apply to this division ~~and~~
4 ~~to~~, Division 8 (commencing with Section 8100) *and Division 102*
5 *(commencing with Section 102100) of this code, Chapter 12*
6 *(commencing with Section 7600) of Division 3 of the Business and*
7 *Professions Code, and Chapter 19 (commencing with Section*
8 *9600) of Division 3 of the Business and Professions Code.*

9 SEC. 2. Section 7001 of the Health and Safety Code is
10 amended to read:

11 7001. "Human remains" or "remains" means the body of a
12 deceased person, regardless of its stage of decomposition, and
13 cremated remains.

14 SEC. 3. Section 7002 of the Health and Safety Code is
15 amended to read:

16 7002. "Cremated remains" means the ~~material that is left~~
17 ~~after cremation in a crematory of a body or a part of a body of a~~
18 ~~deceased person.~~ *ashes and bone fragments of a human body that*

1 *are left after cremation in a crematory, and includes ashes from the*
2 *cremation container. “Cremation remains” does not include*
3 *foreign materials, pacemakers, or prostheses.*

4 SEC. 4. Section 7003 of the Health and Safety Code is
5 amended to read:

6 7003. “Cemetery” means either of the following:

7 (a) Any of the following that is used or intended to be used and
8 dedicated for cemetery purposes:

9 (1) A burial park, for earth interments.

10 (2) A mausoleum, for crypt or vault interments.

11 (3) A crematory, ~~or a crematory~~ and columbarium, for cinerary
12 interments.

13 (b) A place where six or more human bodies are buried.

14 SEC. 5. Section 7005 of the Health and Safety Code is
15 amended to read:

16 7005. Except in Part 5 (commencing with Section 9501) of
17 Division 8, “mausoleum” means a structure or building for the
18 entombment of human remains in crypts or vaults in a place used,
19 or intended to be used, and dedicated, for cemetery purposes.

20 SEC. 6. Section 7007 of the Health and Safety Code is
21 amended to read:

22 7007. Except in Part 5 (commencing with Section 9501) of
23 Division 8, “columbarium” means a structure, room, or other
24 space in a building or structure containing niches for inurnment of
25 cremated human remains in a place used, or intended to be used,
26 and dedicated, for cemetery purposes.

27 SEC. 7. Section 7010 of the Health and Safety Code is
28 amended to read:

29 7010. “Cremation” means the process by which the
30 following three steps are taken:

31 (a) The reduction of the body of a deceased human to its
32 essential elements by incineration.

33 (b) The repositioning or moving of the body or remains during
34 incineration to facilitate the process.

35 (c) The processing of the remains after removal from the
36 cremation chamber pursuant to Section 7010.3.

37 SEC. 8. Section 7010.5 of the Health and Safety Code is
38 amended to read:

39 7010.5. “Residue” means human ashes, bone fragments,
40 prostheses, and disintegrated material from the chamber itself,

1 imbedded in cracks and uneven spaces of a cremation chamber,
2 that cannot be removed through reasonable manual contact with
3 sweeping or scraping equipment. Material left in the cremation
4 chamber, after the completion of a cremation, that can be
5 reasonably removed shall not be considered “residue.”

6 SEC. 9. Section 7010.7 of the Health and Safety Code is
7 amended to read:

8 7010.7. “Scattering” means the authorized dispersal of
9 cremated remains at sea, in other areas of the state, or commingling
10 in a defined area within a dedicated cemetery, in accordance with
11 this part.

12 SEC. 10. Section 7012 of the Health and Safety Code is
13 amended to read:

14 7012. “Entombment” means the process of placing human
15 remains in a crypt or vault.

16 SEC. 11. Section 7013 of the Health and Safety Code is
17 amended to read:

18 7013. “Burial” means the process of placing human remains
19 in a grave.

20 SEC. 12. Section 7014 of the Health and Safety Code is
21 amended to read:

22 7014. “Grave” means a space of earth in a burial park, used,
23 or intended to be used, for the disposition of human remains.

24 SEC. 13. Section 7016 of the Health and Safety Code is
25 amended to read:

26 7016. “Niche” means a space in a columbarium used, or
27 intended to be used, for the placement of cremated human remains.

28 SEC. 14. Section 7017 of the Health and Safety Code is
29 repealed.

30 SEC. 15. Section 7021 of the Health and Safety Code is
31 amended to read:

32 7021. “Directors” or “governing body” means the board of
33 directors, board of trustees, or other policymaking body of a
34 cemetery association.

35 ~~SEC. 16. Section 7025 of the Health and Safety Code is~~
36 ~~amended to read:~~

37 ~~7025. “Disposition” means the final arrangements made for~~
38 ~~human remains within California, or the shipment outside of~~
39 ~~California, for lawful final arrangements or scattering elsewhere,~~
40 ~~including release of remains pursuant to Section 103060.~~

~~SEC. 17.—~~

~~SEC. 16.~~ Section 7054.5 of the Health and Safety Code is repealed.

~~SEC. 18.—~~

~~SEC. 17.~~ Section 7054.6 of the Health and Safety Code is amended to read:

7054.6. (a) Cremated remains may be removed in a durable container from the place of cremation or interment and kept in the dwelling owned or occupied by the person having the right to control disposition of the remains under Section 7100, or the durable container holding the cremated remains may be kept in a church or religious shrine, if written permission of the church or religious shrine is obtained and there is no conflict with local use permit requirements or zoning laws, if the removal is under the authority of a permit for disposition granted under Section 103060. The placement, in any place, of six or more cremated remains under this section does not constitute the place a cemetery, as defined in Section 7003.

(b) Prior to disposition of cremated remains, every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, and the agents and employees of the licensee or registrant shall do all of the following:

(1) Remove the cremated remains from the place of cremation in a durable container.

(2) Keep the cremated remains in a durable container.

(3) Store the cremated remains in a place free from exposure to the elements.

(4) Responsibly maintain the cremated remains.

~~SEC. 19.—~~

~~SEC. 18.~~ Section 7104.1 of the Health and Safety Code is amended to read:

7104.1. If, within 30 days after the coroner notifies or diligently attempts to notify the person responsible for the interment of a decedent's remains which are in the possession of the coroner, the person fails, refuses, or neglects to inter the remains, the coroner may inter the remains. The coroner may recover any expenses of the interment from the responsible person.

~~SEC. 20.—~~

1 *SEC. 19.* Section 7109 of the Health and Safety Code is
2 amended to read:

3 7109. The court shall allow costs and reasonable attorney's
4 fees to a prevailing plaintiff against all defendants, other than the
5 coroner.

6 ~~*SEC. 21.*~~

7 *SEC. 20.* Section 7116 of the Health and Safety Code is
8 amended to read:

9 7116. Cremated remains may be scattered ~~or placed~~ in areas
10 where no local prohibition exists, provided that the cremated
11 remains are not distinguishable to the public, are not in a container,
12 and that the person who has control over disposition of the
13 cremated remains has obtained written permission of the property
14 owner or governing agency to scatter on the property. A state or
15 local agency may adopt an ordinance, regulation, or policy, as
16 appropriate, authorizing, consistent with this section, or
17 specifically prohibiting, the scattering of cremated human remains
18 on lands under the agency's jurisdiction. The ~~placement or~~
19 scattering of the cremated remains of more than one person in one
20 location pursuant to this section shall not create a cemetery
21 pursuant to Section 7003 or any other provision of law.

22 ~~*SEC. 22.*~~

23 *SEC. 21.* Section 7200 of the Health and Safety Code is
24 amended to read:

25 7200. Every head of a public institution, city or county
26 undertaker, or state, county, or city officer having charge or control
27 of remains to be interred at public expense shall use due diligence
28 to notify the relatives of the decedent. In the absence of any known
29 relative of the decedent desiring to direct the disposition of the
30 remains in a manner other than provided in this chapter, and upon
31 written request of the state department that these notices are
32 required for a definite period specified in the request, that officer
33 shall notify the state department immediately after the lapse of
34 twenty-four hours after death, stating, whenever possible, the
35 name, age, sex, and cause of death of the decedent.

36 ~~*SEC. 23.*~~

37 *SEC. 22.* The heading of Chapter 1 (commencing with
38 Section 8100) of Part 1 of Division 8 of the Health and Safety Code
39 is amended to read:

40

CHAPTER 1. DEFINITIONS

~~SEC. 24.—~~

SEC. 23. Section 8100 of the Health and Safety Code is amended to read:

8100. The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this division.

~~SEC. 25.—~~

SEC. 24. Section 8113.2 of the Health and Safety Code is repealed.

~~SEC. 26.—~~

SEC. 25. Section 8300 of the Health and Safety Code is amended to read:

8300. (a) A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in this article.

(b) The cemetery authority's power includes, but is not limited to, the following:

(1) Restricting and limiting the use of all property within its cemetery.

(2) Regulating the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions, but shall not require, as a condition to the erection of a marker, monument, or other structure within the cemetery, that the marker, monument, or other structure be purchased from or through the cemetery authority.

(3) Prohibiting the erection of monuments, markers, or other structures in or upon any portion of the cemetery.

(4) Regulating or prohibiting monuments, effigies, and structures within any portion of the cemetery and provide for their removal.

(5) Regulating or preventing the introduction or care of plants or shrubs within the cemetery.

(6) Preventing interment in any part of the cemetery of human remains not entitled to interment and preventing the use of interment plots for purposes violative of its restrictions or rules and regulations.

1 (7) Regulating the conduct of persons and preventing improper
2 assemblages in the cemetery.

3 (8) Making and enforcing rules and regulations for all other
4 purposes deemed necessary by the cemetery authority for the
5 proper conduct of the business of the cemetery, for the transfer of
6 any plot or the right of interment, and the protection and
7 safeguarding of the premises, and the principles, plans, and ideals
8 on which the cemetery is conducted.

9 ~~SEC. 27.—~~

10 *SEC. 26.* Section 8301 of the Health and Safety Code is
11 repealed.

12 ~~SEC. 28.—~~

13 *SEC. 27.* Section 8302 of the Health and Safety Code is
14 repealed.

15 ~~SEC. 29.—~~

16 *SEC. 28.* Section 8303 of the Health and Safety Code is
17 repealed.

18 ~~SEC. 30.—~~

19 *SEC. 29.* Section 8304 of the Health and Safety Code is
20 repealed.

21 ~~SEC. 31.—~~

22 *SEC. 30.* Section 8305 of the Health and Safety Code is
23 repealed.

24 ~~SEC. 32.—~~

25 *SEC. 31.* Section 8306 of the Health and Safety Code is
26 repealed.

27 ~~SEC. 33.—~~

28 *SEC. 32.* Section 8307 of the Health and Safety Code is
29 repealed.

30 ~~SEC. 34.—~~

31 *SEC. 33.* Section 8308 of the Health and Safety Code is
32 repealed.

33 ~~SEC. 35.—~~

34 *SEC. 34.* Section 8571 of the Health and Safety Code is
35 amended to read:

36 8571. (a) All plots, the use of which has been conveyed by
37 deed or certificate of ownership as a separate plot, are indivisible
38 except with the consent of the cemetery authority, or as provided
39 by law.

(b) A plot, the use of which has been conveyed by deed or certificate of ownership as a family plot, thereby becomes inalienable and shall be held as a family plot of the owner.

~~SEC. 36.—~~

SEC. 35. Section 8650 of the Health and Safety Code is amended to read:

8650. (a) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner deed or certificate of ownership to an individual owner, the plot shall become the family plot of the owner.

(b) If the owner dies without making disposition of the plot either in his or her will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, any unoccupied portions of the plot shall pass according to the laws of intestate succession as set forth in Sections 6400 to 6413, inclusive, of the Probate Code.

(c) As of January 1, 2002, any unoccupied portions of a family plot that became inalienable pursuant to this section as it read on December 31, 2001, shall no longer be inalienable and shall pass according to the laws of intestate succession as set forth in Sections 6400 to 6413, inclusive, of the Probate Code. No sale, transfer, or donation of any unused portion of a family plot made alienable under this subdivision shall be made unless all persons entitled to interment in the family plot under Sections 8651 and 8652 are deceased or have expressly waived in writing the right to be interred in the family plot.

(d) The seller of a cemetery plot shall notify the buyer that unused portions of a family plot may pass through intestate succession unless written disposition is made by the buyer and may be sold, transferred, or donated by the buyer's heirs. The seller shall notify the buyer of the effect of a future transfer, sale, or donation of the unused portion of a family plot on any endowment for care or maintenance of the plot that the buyer may purchase in conjunction with the purchase of the cemetery plot.

~~, the plot shall become the family plot of the owner.~~

~~(b) If the owner dies without making disposition of the plot either in his or her will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery~~

1 authority, the unoccupied portions of the plot shall pass according
2 to the laws of intestate succession as set forth in Sections 6400 to
3 6413, inclusive, of the Probate Code.

4 (e) ~~As of January 1, 2002, any family plot that became~~
5 ~~inalienable pursuant to this section as it read on December 31,~~
6 ~~2001, shall no longer be inalienable and shall pass according to the~~
7 ~~laws of intestate succession as set forth in Sections 6400 to 6413,~~
8 ~~inclusive, of the Probate Code.~~

9 ~~SEC. 37.—~~

10 *SEC. 36.* Section 8650.5 is added to the Health and Safety
11 Code, to read:

12 ~~8650.5.—An affidavit by a person having knowledge of the~~
13 ~~facts setting forth the fact of the death of the owner, the absence~~
14 ~~of a disposition of the plot by the owner in his or her will by a~~
15 ~~specific devise, the name of the person or persons who are owners~~
16 ~~of the plot by virtue of the laws of intestate succession, and the~~
17 ~~consent of that person or those persons to the sale of the plot shall~~
18 ~~constitute complete authorization to the cemetery authority to~~
19 ~~permit the sale of the unoccupied portions of the plot.—~~

20 *8650.5. An affidavit executed by a person who is the owner of*
21 *the plot by virtue of the laws of intestate succession or by his or her*
22 *attorney-in-fact, setting forth the fact of the death of the owner, the*
23 *absence of a disposition of the plot by the owner in his or her will*
24 *by a specific devise, the name of the person or persons who have*
25 *rights to the plot under the intestate succession laws of the state,*
26 *and the consent of that person or those persons to the sale of the*
27 *plot by the cemetery authority, shall constitute complete*
28 *authorization to the cemetery authority to permit any sale of the*
29 *unoccupied portions of the plot.*